

## Office of the Secretary, Interior

## § 4.452-7

witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

### § 4.452-4 Authority of administrative law judge.

The administrative law judge is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses and to take and cause depositions to be taken for the purpose of tasking testimony but not for discovery in accordance with the act of January 31, 1903 (43 U.S.C. 102-106), to administer oaths, to call and question witnesses, and to make a decision. The issuance of subpoenas, the attendance of witnesses and the taking of depositions shall be governed by §§ 4.423 and 4.26 of the general rules in subpart B of this part.

### § 4.452-5 Conduct of hearing.

So far as not inconsistent with a pre-hearing order, the administrative law judge may seek to obtain stipulations as to material facts and the issues involved and may state any other issues on which he may wish to have evidence presented. He may exclude irrelevant issues. The contestant will then present his case following which the other parties (and in private contests the Bureau, if it intervenes) will present their cases.

### § 4.452-6 Evidence.

(a) All oral testimony shall be under oath and witnesses shall be subject to cross-examination. The administrative law judge may question any witness. Documentary evidence may be received if pertinent to any issue. The administrative law judge will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(b) Objections to evidence will be ruled upon by the administrative law judge. Such rulings will be considered, but need not be separately ruled upon, by the Board in connection with its decision. Where a ruling of an administrative law judge sustains an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence, and the objecting party may then make an offer of proof in rebuttal.

### § 4.452-7 Reporter's fees.

(a) The Government agency initiating the proceedings will pay all reporting fees in hearings in Government contest proceedings, in hearings under the Surface Resources Act of 1955, as amended, in hearings under the Multiple Mineral Development Act of 1954, as amended, where the United States is a party, and in hearings under the Mining Claims Rights Restoration Act of 1955, regardless of which party is ultimately successful.

(b) In the case of a private contest, each party will be required to pay the reporter's fees covering the party's direct evidence and cross-examination of witnesses, except that if the ultimate decision is adverse to the contestant, he must in addition pay all the reporter's fees otherwise payable by the contestee.

(c) Each party to a private contest shall be required by the administrative law judge to make reasonable deposits for reporter's fees from time to time in advance of taking testimony. Such deposits shall be sufficient to cover all reporter's fees for which the party may ultimately be liable under paragraph (b) of this section. Any part of a deposit not used will be returned to the depositor upon the final determination of the case except that deposits which are required to be made when a complaint is filed will not be returned if the party making the deposit does not appear at the hearing, but will be used to pay the reporter's fee. Reporter's fees will be at the rates established for the local courts, or, if the reporting is done pursuant to a contract, at rates established by the contract.